

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, September 1, 2005

Division One

A108510 – The People v. Shawn Alberson.

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication)

A106367 – Gilbert Montoya v. Retirement Board of the City and County of San Francisco.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, September 1, 2005

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J. and Margulies, J.; and P. Aguilar, Deputy Clerk.

- A106685 People
 v.
 Charles Allen Smith
 Cause called and argued by William Balin, counsel for appellant, and Rene A. Chacon, counsel for respondent. Cause ordered submitted.
- A106761 Shelva Jean St. John et al.
 v.
 Willamette Industries, Inc.
 Cause called and argued by Joseph W. Carcione, counsel for appellants, and William S. Ginsburg, counsel for respondent. Cause ordered submitted.
- A106872 Sydney Wise et al.
 v.
 Kelly-Moore Paint Company
 Cause called and argued by Bryce C. Anderson, counsel for appellants, and Lori A. Cataldo, counsel for respondent. Cause ordered submitted.
- A107141 William Heriot
 v.
 Optime Therapeutics DE, Inc.
 Cause called and argued by Kenneth R. Morris, counsel for appellant, and Brian R. Irion, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, September 1, 2005

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J. and Margulies, J.; and P. Aguilar, Deputy Clerk.

- A107746 Taylor A. Henderson
v.
Mutual Service Corporation et al.
Cause called and argued by William M. Turner, counsel for appellants and Thomas L. Riordan, counsel for respondent. Cause ordered submitted.
- A106732 Jaynelle Bell
v.
Doris Bostick
Cause called and argued by pro per appellant Jaynelle Bell, and David Johnson, counsel for respondent. Cause ordered submitted.
- A109315 Thompson Pacific Construction, Inc.
v.
State of California et al.
Cause called and argued by Alexander Bannon, counsel for appellant, Amy Martin, counsel for real party in interest and Douglas Nareau, counsel for respondent. Cause ordered submitted.
- A106881 Ronald G. Baker et al.,
v.
Albert Rench, et al.
Cause called and argued by William Last, counsel for appellants, and James Ramsaur, counsel for respondents. Cause ordered submitted.

Court recessed until Friday, September 2, 2005.

Thursday, September 1, 2005 (continued)

Division Two

A107666 – Sandra Agi, as Trustee, etc. v. Marzia Leonhardt, et al.

Marzia Leonhardt v. Sandra Agi, as Trustee, etc., et al.

The judgment is reversed and this case is remanded for further proceedings consistent with this opinion. Each party is to bear their own costs on appeal. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Friday, September 2, 2005

Division One

A105461 and A106368 – Jacq Wilson et al., v. Brawn of California, Inc.

The judgment is reversed. The order awarding litigation expenses and attorney fees is reversed. Brawn is awarded its costs on appeal. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Certified for Publication)

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Friday, September 2, 2005

The Court reconvened at 9:00 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J. and Swager, J.; and F. Abad, Deputy Clerk.

A109221 Harry J. Williby
v.
Suvimol Kuanchaum-Miller
Cause called and moved to end of calendar. Appellant not present.

Justice Stein left the bench and Justice Margulies joined the bench.

A108841 In re Charlia P.
The People
v.
Charlia P.
Cause called and argued by David Martin, counsel for appellant and Martin Kaye, counsel for respondent. Cause ordered submitted.

Justice Margulies left the bench and Justice Stein joined the bench.

A109221 Harry J. Williby
v.
Suvimol Kuanchaum-Miller, et al.
Cause called, no argument. Harry Williby, appellant in pro per, not present. Daniel Presher appeared as counsel for respondent. Cause ordered submitted.

Court Adjourned.

Tuesday, September 6, 2005

Division Two

A104804 – Jackson Tufts Cole & Black, LLP v. Craig L. Linden.

The judgment is affirmed. Plaintiff shall recover its costs on appeal. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication)

A106561 – The People v. Kenny Sacher.

Defendant's conviction for possession of burglar's tools in count 3 is reversed. The judgment is affirmed in all other respects. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

A107395 – The People v. Derrick D. Dupaty.

The order under section 987.8 is reversed and the matter remanded for proceedings in accordance with the views expressed herein. In all other respects, the judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication)

Division Three

A104009 – The People v. Nicolas Quintanilla.

The conviction for intimidating a witness (Count VIII) is reversed. The judgment is otherwise affirmed. Parrilli, J. I Concur: Corrigan, Acting P.J. (See Concurring opinion by Pollak, J.) (Certified for Partial Publication)

Division Five

A108205 – The People v. Tari C. Johnson.

The judgment is reversed and remanded for proceeding in accord with this opinion. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

Wednesday, September 7, 2005

Division One

A110693 – Carolyn H. v. Contra Costa County Superior Court; Contra Costa County Children and Family Services Bureau, R.P.I.

The request for stay is denied and the petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) This decision is final in this court immediately. (Rule 24(b)(3).) Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Four

A107815 – The People v. Michael Joseph Ringheimer.

By the Court: The petition for rehearing is denied. Reardon, Acting P.J.

Thursday, September 8, 2005

Division One

A108841 – In re Charlia P., a Person Coming Under the Juvenile Court Law. The People v. Charlia P.

The adjudication of wardship is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Four

A108771 – The People v. Kenneth Applewhite.

The order extending defendant's commitment is affirmed. Munter, J.* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, September 9, 2005

Division Five

A106831 – The People v. Noel Guido-Silva.

The judgment as to counts 3 and 4 is reversed and remanded. The judgment is otherwise affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication)

Monday, September 12, 2005

Division Four

A106141 – The People v. Tony Andrew Cotton.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Rivera, J., Munter, J.* (Not for Publication)

A108843 – Lynn A. Devine v. Jeff Carter.

The order denying the motion to set aside the judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Munter, J.* (Not for Publication)

Division Five

A093538 – Milton Wise et al., v. Pacific Gas and Electric Company.

The judgment is reversed and remanded for further proceedings consistent with this opinion. Jones, P.J. We Concur: Stevens, J., Simons, J. (Certified for Partial Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, September 13, 2005

Division One

A106872 – Sydney Wise, a Minor, etc., et al., v. Kelly-Moore Paint Company, Inc.

The judgment of the trial court is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication)

A106218 – The People v. Carlos E. Rodriguez.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

A106669 – Thomas A. Trapani v. Rankin, Sproat, Mires, Beatty & Reynolds et al.

The order denying the motion to compel arbitration is affirmed. Costs on appeal are awarded to Trapani. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

A110760 – Mary G. v. The Superior Court of Solano County; Solano County Health and Social Services Department, R.P.I.

A110761 – Gilbert G. v. The Superior Court of Solano County; Solano County Health and Social Services Department, R.P.I.

The petition for extraordinary writ is denied on the merits. Our decision is final as to this court immediately. (Rule 24(b)(3).) Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

A106213 – The People v. Antonio Acosta.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not For Publication)

A107300 – In re Danario L., a Person Coming Under the Juvenile Court Law. The People v. Danario L.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication)

Tuesday, September 13, 2005 (continued)

Division Two

A103504 – The People v. Sean Keith Shields.

The true finding on the peace officer penalty allegation (§ 664, subd. (e)) in count one is reversed and remanded to the trial court for retrial. (See *People v. Schulz* (1992) 5 Cal.App.4th 563, 569-570.) Appellant's conviction for possession of an assault weapon is reversed and the two-year concurrent sentence is stricken from the abstract of judgment. In all other respects, the judgment is affirmed. Kline, P.J. I Concur: Lambden, J. (See Dissenting opinion by Haerle, J.) (Not for Publication)

A106076 – Cecil R. Hawkins v. Toyota Motor Credit Corporation.

The judgment is affirmed. Respondent is awarded costs as the prevailing party. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication)

A102928 – The People v. Gerardo Ponce.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

Division Four

A107917 – The People v. Dung Ly.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

A109174 – The People v. Jamie Lou McMannus.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

A108937 – The People v. Lucy Lock.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

Wednesday, September 14, 2005

Division One

A106685 – The People v. Charles Allen Smith.

The judgment as to count VI only is reversed, and the associated two-year concurrent sentence is stricken. The eight-month sentences imposed in connection with counts III and IV are stayed. In all other respects, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting these modifications and to forward a certified copy of same to the Department of Corrections. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Certified for Partial Publication)

A109221 – Harry J. Williby v. Suvimol Kuanchaum-Miller et al.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

Division Three

A103355 – C. Cooper v. Ellen E. Lyon.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A107819 – The People v. Russell Eugene Nichols.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A109791 – In re Ryan L., a Person Coming Under the Juvenile Court Law. The People v. Ryan L.

The commitment order is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication)

A108139 – Claire Mortimer v. Retirement Board of the City and County of San Francisco.

The judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication)

Wednesday, September 14, 2005 (continued)

Division Four

A107747 – In re J.B., a Person Coming Under the Juvenile Court Law. The People v. J.B.

By the Court: The petition for rehearing is denied. Reardon, Acting P.J.

A109957 – The People v. James D. Simpson.

The judgment is accordingly ordered modified to strike the \$800 restitution fine and \$800 parole restitution fine and to reflect instead a restitution fine in the amount of \$200 and a parole restitution fine in the amount of \$200, stayed unless parole is revoked. The court shall prepare an amended abstract of judgment and deliver it to the department of corrections. In all other respects the judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Munter, J.* (Not for Publication)

A107670 – The People v. Jesus A. Moreno.

The conviction of assault in action No. 05-031322-1 is reversed. The judgment is further ordered to be modified to reflect that the 18-month sentence for the grand theft conviction in action No. 02-273914-2 is stayed pursuant to section 654. In all other regards, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment and to forward a certified copy of it to the California Department of Corrections. Sepulveda, J. We Concur: Reardon, Acting P.J., Munter, J.* (Not for Publication)

A107458 – James H. Flanagan v. Pil L. Orbison.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

Division Five

A108509 – The People v. Clifford Dale Robinson.

The order is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, September 15, 2005

Division One

A108841 – In re Charlia P., a Person Coming Under the Juvenile Court Law. The People v. Charlia P.

Order Modifying Opinion and Denying Rehearing and no change in judgment. The Court: It is ordered that the opinion filed herein on September 8, 2005, be modified as follows: (See Order) There is no change in the judgment. Appellant's petition for rehearing is denied. Marchiano, P.J. (Not for Publication)

A106732 – Jaynelle Bell v. Doris Bostick.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Division Two

A109706 – Chicago Title Insurance Company v. Gerard A. De Biasi, Jr.

The appeal is dismissed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

A101161 – The People v. Arthur John Aranda.

The judgment is affirmed. Haerle, J. I Concur: Lambden, J. (See Concurring opinion by Kline, P.J.) (Not for Publication)

A110915 and A111276 – Ali A. Abid et al., v. Kbus Holdings, LLC et al.

We dismiss these appeals without reaching their merits for lack of appellate jurisdiction. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Thursday, September 15, 2005 (continued)

Division Three

A111333 – The People v. The Superior Court of San Francisco County; Gill Misael Blanco, R.P.I.

Let a peremptory writ of mandate issue directing respondent superior court to vacate its order granting defendant's Penal Code section 995 motion to dismiss count six of the information charging a violation of Penal Code section 273.5 and dismissing that count, and to enter a new and different order denying the motion and reinstating count six of the information charging a violation of Penal Code section 273.5. Our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(b)(3).) The stay previously issued by this court shall remain in effect until the issuance of the remittitur. (Cal. Rules of Court, rule 26.) McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

Division Four

A108268 – The People v. Omar Hussein Abedelal.

Judgment reversed and the remittitur shall issue forthwith. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

A109614 – The People v. Daniel Mack King.

The judgment is affirmed. Munter, J*. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

A105272 – The People v. Luther Evans.

The Court: On the court's own motion, the opinion filed herein on August 19, 2005, is hereby ordered certified for partial publication, and said opinion, with the exception of part II.A, shall be published in the Office Reports. Reardon, Acting P.J. (Certified for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, September 16, 2005

Division One

A107746 – Taylor A. Henderson v. Mutual Service Corporation, et al.

The order appealed from is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Division Two

A108028 – The People v. Michael Leigh Joseph.

The judgments in the three consolidated appeals are each affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Division Three

A108418 – The People v. Jonathan Ramon Cook.

The appeal is dismissed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

Division Four

A105313 and A106163 – Jason England et al., v. Swinerton Builders et al.

By the Court: The petition for rehearing is denied. Reardon, Acting P.J.

Monday, September 19, 2005

Division One

A110008 – The People v. Steven Allums.

The order revoking defendant's probation and the sentence imposed are affirmed.
Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Monday, September 19, 2005

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Ruvolo, J. and I. Santos, Deputy Clerk.

- A105392 McCrary Construction Company,
v.
Metal Deck Specialists, Inc.,
Horizon Sheet Metal, Inc.
Cause called and argued by James Nielsen and Robert Curotto, counsel for appellants, and William S. Ginsburg, counsel for respondents. Cause ordered submitted.
- A104987 The People,
v.
Armondo Gib Ortega.
Cause called and argued by Richard Such, counsel for appellant, and Kelly M. Croxtin, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A106241 Theresa Kuhlman,
v.
John Tjoelker.
Cause called and argued by Brian Lanz, counsel for appellant, and Jay-Allen Eisen, counsel for respondent. Cause ordered submitted.
- A108462 Metreon, Inc.,
v.
Loews California Theatres, Inc.
Cause called and argued by Martin D. Katz, counsel for appellant, and Douglas J. Danzig, counsel for respondent. Cause ordered submitted.
- A107763/
A107769 Greystone Homes, Inc.,
v.
Chuck Cake, as Acting Director.
Cause called and argued by Andrew Sabey and Greg Stepanicich, counsel for

appellants, and Anthony Mischel and Scott A. Kronland, counsel for respondents. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P.J., Lambden, J., Ruvolo, J., and I. Santos, Deputy Clerk.

A105079 Damien Custer et al.,
 v.
 Carolyn Stoops et al.
Cause called and argued by Joseph Baxter, counsel for appellant, and Ronald Richman and Seth Feinberg, counsel for respondents. Cause ordered submitted.

A108136 Mitchell Muroff,
 v.
 Jeffrey P. Brainerd et al.
Cause called and argued by William Weiss, counsel for appellant, and Thomas George Beatty, counsel for respondents. Cause ordered submitted.

At this point of the proceedings, Presiding Justice Kline left the bench and Justice Haerle joined the bench as Acting Presiding Justice for the remainder of the calendar.

A107693 The People,
 v.
 Tammi Hardy.
Cause called and argued by Terrence McQuigg, counsel for appellant, and Michael E. Banister, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A105166 The People,
 v.
 Richard Forrest Picard.
Cause called and argued by Kathleen W. Novoa, counsel for appellant, and Rene A. Chacon, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A106833 Victoria L. Tseng,
 v.
 Jeffrey C.P. Want et al.
Cause called and argued by Jayesh Patel and T. Lance Archer, counsel for appellants, and Arthur Meyer Brunwasser, counsel for respondent. Cause ordered submitted.

Court recess until Tuesday, September 20, 2005 at 9:30 a.m.

Monday, September 19, 2005 (continued)

Division Three

A109618 – The People v. Donald Ray Brown, Jr.

The judgment and sentence imposed are affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication)

A105204 – The People v. Frank Albert Florez.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A108974 – The People v. Chad R. Angle.

The order revoking and reinstating probation is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A108654 – In re Maurice E., a Person Coming Under the Juvenile Court Law. The People v. Maurice E.

The Court: Appellant's petition for rehearing is denied. McGuiness, P.J.

Division Four

A109206 – The People v. Brian Anthony Ando.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Munter, J.* (Not for Publication)

Division Five

A093538 – Milton Wise et al., v. Pacific Gas and Electric Company.

Order Modifying Opinion. The opinion filed September 12, 2005, is modified as follows: (See Order) This modification does not change the judgment. Jones, P.J. (Certified for Partial Publication)

A110048 – The People v. Donald Jay Terral.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, September 20, 2005

Division Two

A105701 – The People v. Kenneth Lewis.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication)

Division Four

A107951 – In re Daniel G., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau v. Daniel G., Sr. et al.

The judgment terminating parental rights is reversed. The matter is remanded for further proceedings consistent with this opinion. Reardon, Acting P.J. We Concur: Rivera, J., Munter, J.* (Not for Publication)

Division Five

A110143 – In re Ulises B., a Person Coming Under the Juvenile Court Law. The People v. Ulises G.

The orders of the juvenile court are affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, September 21, 2005

Division One

A109047 – The People v. Christopher Urban.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

A107141 – William Heriot v. Optime Therapeutics De, Inc.

The award of prejudgment interest in the amount of \$21,000 is reversed. In all other respects the judgment is affirmed. The parties are to bear their own costs. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

A110030 – In re Frank W., a Person Coming Under the Juvenile Court of Law. The People v. Frank W.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

A107959 – The People v. James Wilbur McGary.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication)

A107725 – Mark Darulis v. City and County of San Francisco et al.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

A107900 – The People v. Norman Brown, Jr.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

A107300 – In re Danario L., a Person Coming Under the Juvenile Court Law. The People v. Danario L.

Order Modifying Opinion and Denying Rehearing. By the Court: It is ordered that the opinion filed herein on September 13, 2005, be modified as follows: (See Order) This modification does not effect a change in the judgment. Petition for rehearing is denied. Haerle, Acting P.J.

A107989 – The People v. Conley Holloway.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Wednesday, September 21, 2005 (continued)

Division Three

A106899 – Heller Ehrman White & McAuliffe v. Carol L. Price.

The judgment is affirmed. Price shall recover her costs on appeal. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication)

A108757 – In re Douglas H., a Person Coming Under the Juvenile Court Law. The People v. Douglas H.

The juvenile court's orders are affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

A102296 – Fritz Benesch v. William Hoisington et al.

The judgment is reversed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

A105673 and A106160 – Elleree Jones v. John Crane, Inc.

The Court: The opinion in the above-entitled matter filed on August 24, 2005, was certified for partial publication in the Official Reports. For good cause it now appears that the opinion should be published in full in the Official Reports and it is so ordered. McGuinness, P.J. (Certified for Publication)

A106268 – The People v. Leonard Boone.

The judgment is vacated and the case remanded for the limited purpose of determining whether to dismiss Boone's robbery conviction and, if necessary, for resentencing. Parrilli, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication)

A103332 and A105793 – Carol Price v. James M. Montgomery Consulting Engineers, Inc.

The judgment and the fee award are affirmed. Montgomery shall recover its costs on appeal. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication)

A104260 – Fritz Benesch v. Valli Benesch Tandler et al.

The judgment is reversed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication)

A105405 and A106473 – Scott Vogel v. American Amateur Baseball Congress, et al.

The November 17, 2003 judgment and the order entered March 4, 2004 granting cost-of-proof sanctions in the amount of \$78,000 are reversed. Appellants shall recover their costs on appeal. Parrilli, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication)

Wednesday, September 21, 2005 (continued)

Division Four

A106370 – Alfonso Lai, Individually and as Trustee, etc. v. Christopher Lai.

The judgment is affirmed. Upon timely application in the trial court, Alfonso Lai shall recover his costs incurred on appeal. (Cal. Rules of Court, rule 27.) Sepulveda, J. We Concur: Reardon, Acting P.J., Munter, J.* (Not for Publication)

A108233 – In re E.P. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. N.G.

The order is affirmed. Rivera, J. We Concur: Sepulveda, Acting P.J., Munter, J.* (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, September 22, 2005

Division One

A106881 – Ronald G. Baker et al., v. Albert Rench et al.

We remand the case with the direction that the trial court modify its order denying attorney fees by the addition of the following language: “This order does not affect the Rences’ entitlement to an award of statutory costs of \$5,407.58 pursuant to the cost memorandum filed on December 8, 2003.” As so modified, the other appealed from is affirmed. Each side shall bear its own costs on appeal. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Division Two

A107693 – The People v. Tammi Hardy.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication)

Division Three

A106482 – Pamela Z. Lanaro v. Bob G. Mason, et al.

The judgment of the trial court is affirmed. Appellants shall pay respondent’s costs on this appeal. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication)

A108362 – The People v. William David Harper.

The judgment and sentence are affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

A105506 – Delbert E. Facklam, et al., v. Leroy W. Chase, et al.

The judgment is affirmed. Appellant shall pay respondents’ costs on this appeal. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

Thursday, September 22, 2005 (continued)

Division Four

A103946 – John Zboray v. Sectorbase.com, Inc.; Revere Data, LLC, Respondent.

The trial court's order is affirmed. Munter, J.* We Concur: Reardon, Acting P.J.,
Sepulveda, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, September 23, 2005

Division One

A106940 – The People v. Lyle E. Norbert.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A106761 – Shelva St. John, Individually and as Administrator, etc., et al., v. Williamette Industries, Inc.

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication)

Division Three

A109527 – City and County of San Francisco v. George Applegate, et al.

The December 21, 2004, judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

Division Four

A106422 – Ann Lee et al., v. Glassberg, Pollak & Associates.

A108138 – Ann Lee et al., v. Network of City Business Journals.

We affirm (1) the judgment denying GPA's motion to strike (Appeal No. A106422) and (2) the judgment granting NCBJ's motion to strike and the order denying the Lees' motion for discovery (Appeal No. A108138). The parties will bear their own costs on appeal. Reardon, Acting P.J. We Concur: Rivera, J., Munter, J. (Not for Publication)

Friday, September 23, 2005 (continued)

Division Five

A109599 – In re Jordan W., a Person Coming Under the Juvenile Court Law. The People v. Jordan W.

The order of the trial court is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

A107873 – The People v. Vertis Lee Williams.

The sentence is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

A109335 – The People v. Stephanie Dyanne Ball.

The judgment of conviction and sentence are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

A108657 – In re Mohammed N., a Person Coming Under the Juvenile Court Law. The People v. Mohammed N.

This matter is remanded for exercise of the court's discretion pursuant to section 731(b). The disposition order is otherwise affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication)

A108265 – The People v. Damon Wilson.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication)

Monday, September 26, 2005

Division One

A108938 – The People v. Mitchell Lancaster.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

Division Two

A107660 – The People v. Curtis Simmons.

We have carefully reviewed the entire record in these proceedings and concluded that appellant was adequately represented by counsel throughout the proceedings and that there was no sentencing error. We discern no issues that require further briefing and, therefore, the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

A110492 – In re Kenneth D. Phelon, on Habeas Corpus.

The petition for writ of habeas corpus is granted. The Department of Corrections is directed to grant petitioner additional work time credits in accord with section 2933, to recalculate his release date, and if he is overdue for release, as he has alleged, to release him immediately on parole. To the extent that petitioner has spent any time in prison past his lawful release date, the Department of Corrections is directed to deduct such time from petitioner's parole term. (*In re Ballard* (1981) 115 Cal.App.3d 647, 649.) This opinion is final as to this court immediately. (Cal.Rules of Court, rule 24(b)(3).) Kline, P.J. We Concur: Haerle, J., Lambden, J. (Certified for Publication)

Monday, September 26, 2005 (continued)

Division Three

A108795 – The People v. Kevin Hasbrook.

The judgment is modified by striking the \$2,000 restitution fine imposed by the trial court. The \$2,000 restitution fine remains in force. Furthermore, the parole revocation fine is reduced to \$200. The trial court is directed to prepare an amended abstract of judgment reflecting these modifications and forward it to the Department of Corrections. As modified, the judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

A109184 – The People v. Luis Mendoza.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication)

A106943 – The People v. Raymond Jones.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

Division Four

A108827 – Emma Wills et al., v. Gwendolyn L. Norris.

The judgment is affirmed. Sepulveda, Acting P.J. We Concur: Rivera, J., Munter, J.* (Not for Publication)

Division Five

A109476 – The People v. Anthony R. Lopez.

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication)

A106581 – The People v. Luis Enrique Ponce.

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, September 27, 2005

Division One

A109315 – Thompson Pacific Construction, Inc., v. State of California, Occupation Safety and Health Appeals Board; State of California Department of Industrial Relations, R.P.I.

The judgment denying the petition for writ of mandate is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication)

A108271 – The People v. Richard Conway Thorstenson.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication)

A108510 – The People v. Shawn Alberson.

By the Court: The petition for rehearing is denied. Swager, Acting P.J.

A107926 – Mark W. Falkowski et al., v. Imation Corp et al.

Gregory A. Ellis v. Imation Corp et al.

By the Court: Appellant's petition for rehearing is denied. Appellant's request for judicial notice is denied as moot. Marchiano, P.J.

Division Two

A105079 – Damien Custer, et al., v. Carolyn Stoops, et al.

The trial court's judgment is affirmed. Respondents are awarded costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

A110870 – Lynn D. Calvert v. Kashmir Billon et al.

Accordingly, we hereby dismiss the appeal. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Tuesday, September 27, 2005 (continued)

Division Three

A107837 – In re Ramone R., a Person Coming Under the Juvenile Court Law. City and County of San Francisco Department of Human Services v. Elvina R.

The order denying the section 388 petition is affirmed. The order under section 366.26, subdivision (b)(2) is reversed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication)

A109580 – Mark J. Castellucci v. Owen M. Naccarato, et al.

By the Court: The appeal is dismissed with prejudice, with all parties to bear their own costs and attorney fees, and the matter is remanded to the Superior Court of San Mateo County for any and all further proceedings consistent herewith. The Clerk of this Court is directed to issue a Remittitur forthwith. (*Union Bank of California v. Braille Inst. Of America, Inc.* (2001) 92 Cal.App.4th 1324, 1331.) McGuiness, P.J.

A107765 – Allied Arts Neighbors et al., v. The City of Menlo Park; The Woodside-Atherton Auxiliary to the Lucile Salter Packard Children's Hospital at Stanford University et al., R.P.I.

The judgment is reversed with directions to the superior court to grant the petition and issue a peremptory writ of mandate ordering the City of Menlo Park to vacate its approval of the Allied Arts Permit Preservation District and mitigated negative declaration to refrain from issuing a new permit until an environmental impact report with respect to the project has been prepared and approved. The Neighbors shall recover their costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

Tuesday, September 27, 2005 (continued)

Division Four

A108471 – The People v. Jerry D. Jones.

The judgment is affirmed. Munter, J.* We Concur: Reardon, Acting P.J, Sepulveda, J.
(Not for Publication)

A109248 – The People v. Bobby R. Shumard.

The judgment is ordered modified to reflect the imposition of a four-year upper term sentence on count 1 in docket No. CR035445 and to reflect an aggregate term of nine, rather than ten, years in state prison. The fine imposed pursuant to Vehicle Code section 23550 is ordered stricken and the matter is remanded for resentencing for the sole purpose of imposition of a fine pursuant to Vehicle Code section 23536. In all other respects, the judgment is affirmed. Upon resentencing, an amended abstract of judgment in conformance with this opinion shall be prepared and delivered to the department of corrections. Sepulveda, Acting P.J. We Concur: Rivera, J., Munter, J.* (Not for Publication)

Division Five

**A109582 – In re Tramaine W., a Person Coming Under the Juvenile Court Law.
The People v. Tramaine W.**

The juvenile court is ordered to prepare and to forward to the CYA an amended commitment order showing the third component of appellant's commitment was based on his violation of Health and Safety Code section 11370.1, subdivision (a), *not* Health & Safety Code section 11359. In all other respects, the commitment order is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, September 28, 2005

Division One

A109009 – The People v. Robert Charles Daniel.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A104728 – The People v. Nicholas John Martinez, Jr.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication)

Division Two

A106879 – Eva Robertson v. Health Net of California, Inc. et al.

Order for Publication. The Court: The opinion in the above-entitled matter, filed on August 31, 2005, was not certified for publication in the Official Reports. For good cause, it now appears that the opinion should be published in the Official Reports, and it is so ordered. Ruvolo, Acting P.J. (Certified for Publication)

A105570 – Alfonso P. Acampora, Jr. et al, v. Kim Norman et al.

The order granting respondent's special motion to strike is affirmed. Costs on appeal are awarded to respondent. The matter is remanded to the trial court for further proceedings consistent with this opinion. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

A105222 – Adam A. Schwartz v. Visa International Service Association et al.

The judgment is reversed and this case is remanded to the trial court with directions to exercise its discretion to determine whether to grant leave to amend and, if leave is not granted, to enter judgment on the pleadings in favor of appellant's. (See Code Civ. Proc. § 438, subd. (c)(3).) Each party is to bear their own costs on appeal. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Certified for Publication)

A107132 – E.O.C. ORD, Inc., et al., v. Unique Investment Corp.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication)

Wednesday, September 28, 2005 (continued)

Division Three

A109825 – The People v. Michael Wade Randle.

The order revoking probation is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A108799 – In re Daniel P., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency/Children and Family Services v. Alla P.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A102858 – Concord Christian Center, et al., v. Open Bible Stand Churches et al.

The Court: Good cause appearing, the written opinion filed on August 30, 2005, has now been certified for publication pursuant to rule 97(b) of the California Rules of Court, and it is hereby ordered published in the official reports. McGuiness, P.J. (Certified for Publication)

Division Four

A108451 – The People v. Craig Douglas Cousins.

The judgment is affirmed. Sepulveda, Acting P.J. We Concur: Rivera, J., Munter, J.
*(Not for Publication)

A108947 – In re A.S., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Social Services v. Frankie O.

The order terminating Mother's parental rights is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

A106534 – The People v. Damian Antonio Mouton.

The judgment is affirmed. Munter, J.* We Concur: Sepulveda, Acting P.J., Rivera, J. (Not for Publication)

A107158 – Lilia Arguelles v. Seton Medical Center.

The summary judgment is affirmed. Munter, J.* We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, September 28, 2005 (continued)

Division Five

A104990 – The People v. Nickoles Daley.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

Thursday, September 29, 2005

Division One

A106926 – The People v. Roy L. Walker.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A108198 – Raymond Reudy et al., v. O.K. Investments, Inc. et al.

The trial court's award of monetary relief to OKI, including attorney fees, is reversed. The trial court's judgment is in all other respects affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

A108545 – The People v. Mark William Penoli.

The order is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

A106273 – The People v. Samuel F. Tewolde.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

A108071 – The People v. Alfredo Gomez Rodriguez.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Division Two

A107580 – John J. Ford III, et al., v. Richard E. Warren, Jr.

The order granting respondent Warren's motion to set aside the default judgment against him is affirmed. The purported appeal from the order denying appellants' motion to strike Warren's answer and cross-complaint is dismissed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Thursday, September 29, 2005 (continued)

Division Three

A106247 – Cogent Communication, Inc. v. Ebroadbandnow, Inc.; Kevin Cottrell, Defendant and Respondent.

A108113 – Troy David Keali’I Lau; Ebroadbandnow, Inc., Cross-Complaint and Respondent v. Cogent Communication, Inc.

The portions of the judgment after trial providing the EBBN recover from Cogent, and Cogent recover from Kevin Cottrell, the sum of \$78,025, and that EBBN is the prevailing party as to Cogent, are reversed. In all other respects the judgment is affirmed. The order granting in part and denying in part defendants’ motion for attorney fees is reversed, and the matter is remanded to the trial court to determine the amount of Lau’s reasonable attorney fees in prosecuting its cross-complaint. The parties shall bear their respective costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication)

A111119 – The People v. The Superior Court of Solano County; Richard James Ferguson, R.P.I.

Let a peremptory writ of mandate issue directing respondent superior court to vacate its order granting real party in interest’s Penal Code section 995 motion as to counts one and two of the information and to enter a new and different order denying the motion in its entirety. The stay previously issued by this court shall be dissolved upon the issuance of the remittitur. (Cal. Rules of Court, rule 26.) Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Certified for Publication)

A106035 – The People v. Dennis Weston Berry.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

A103366 – City and County of San Francisco v. Agnes K. Pon.

The order is affirmed. Costs to respondent Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

A109192 – In re Robert B., a Person Coming Under the Juvenile Court Law. The People v. Robert B.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

Thursday, September 29, 2005 (continued)

Division Four

A109106 – In re Antonio S. et al., Persons Coming Under the Juvenile Court Law. Solano County Health & Social Services Department v. Maria S.

The order is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Munter, J.* (Not for Publication)

A109665 – In re Barry L., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency v. Barney L.

The order is affirmed. Reardon, Acting P.J. We Concur: Rivera, J., Munter, J.* (Not for Publication)

A107971 and A109000 – Ernst Haemmerling et al., v. Regency Savings Bank, N.A.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

September 29, 2005

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J., Munter, J.*; Ines Calanoc, Deputy Clerk; CHP Officer Vincent Chambers, Bailiff.

* John E. Munter, Judge of the San Francisco Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A108661 Dona E. Fenton,
 v.
 Laurence Smith, et al.
Presiding Justice Reardon called both counsel to the podium. Jerrold Bloch, counsel for appellant Dona Fenton, informed the court he was waiving oral argument. Gerhard Winkler, counsel for respondents, did not oppose. Cause submitted.

A107868 Dora Santos, et al.,
 v.
 Michael Wood, et al.
Cause called. Marc Umeda argued for appellants Dora Santos et al. Leo Cunningham argued for respondents. Cause submitted. Justice Sepulveda left the bench at this point.

Justice Rivera approached the bench. The panel for the following cases now consists of Reardon, J., Rivera, J., and Munter, J.

A108844 The People,
 v.
 Cutberto Roberto Matilde.
Cause called. Stephanie Clarke argued for appellant Cutberto Matilde. John Gordnier argued for respondent. Cause submitted.

Court recessed for 7 minutes.

A109317 The People,
 v.
 Grover Cleveland Thomas.
Cause called. Barry Karl argued for appellant Grover Thomas. Dorian Jung argued for respondent. Cause submitted.

Court recessed at 10:41 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Thursday, September 29, 2005

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J. and Assigned Judge John Munter of the San Francisco County Superior Court; Channing Hoo, Deputy Clerk; Guardsmark Officer Tamicka Bell, Bailiff.

A106895 People
 v.
 Roberta Marquerite Daviau
Cause called. Marylou Hillberg argued for appellant Daviau. Linda Murphy argued for respondent. Cause submitted.

A107462 Clarence Jonathan Wood v. Ralph Lindstrom et al.
A107463 Heidi Collingwood v. Ralph Lindstrom et al.
Causes called. Harold Selan argued for appellant Collingwood. David Dibble argued for appellant Wood. Anne Rudolph argued for respondents. Causes submitted.

At this point, the Court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J., and Rivera, J.

A105688 People
 v.
 Rafael Bankston
Cause called. Victor Morse argued for appellant Bankston. Catherine McBrien argued for respondent. Cause submitted.

At this point, the Court reconstituted itself to include Reardon, Acting P.J., Rivera, J., and Assigned Judge Munter.

A106895 People
 v.
 Sherman Level Davis
Cause called. Kyle Gee argued for appellant Davis. Rene Chacon argued for respondent. Cause submitted.

At this point, the Court reconstituted itself to include Sepulveda, Acting P.J., Rivera, J., and Assigned Judge Munter.

A108970 Erkan Ogras
v.
Warfield Building, Ltd.
Cause called. In pro per appellant Erkan Ogras argued. Sarge Holtzman argued for respondent. Cause submitted.

A107209 Jim Beam Brands Co.
v.
Franchise Tax Board
Cause called. Jordan M. Goodman argued for appellant Jim Beam Brands Co. George Spanos argued for respondent. Cause submitted.

The Court adjourned at 3:42 p.m.

Thursday, September 29, 2005 (continued)

Division Five

A108206 – In re K.G., et al., Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services v. Tonia B.

The August 6, 2005 disposition order is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

A108285 – The People v. Michael Tyler Glynn.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication)

Friday, September 30, 2005

Division One

A108032 – The People v. Mark A. Hughs.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

A109729 – The People v. Steven Kirk Swanton.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

A108814 – The People v. Michael Frederick Oranje.

The judgment is affirmed. Ruvo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

A109294 – The People v. Michael Dwayne Long.

A111183 – In re Michael Dwayne Long, on Habeas Corpus.

Accordingly, the petition for writ of habeas corpus is denied. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

Division Three

A107342 – In re Tyresha C., a Person Coming Under the Juvenile Court Law. The People v. Tyresha C.

The minor appellant's admission of Penal Code section 12022.7 enhancement allegation of the petition filed December 16, 2003, is vacated, and the judgment and disposition order committing appellant to CYA is reversed as having been predicated in part upon that admission. The matter is remanded for further proceedings on the petition and directions to fully inform appellant of the nature of the Penal code section 12022.7 enhancement allegation before any further jurisdiction hearing. The record is ordered corrected to reflect that appellant had earned 181 days of custody credit as of June 9, 2004. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

A103411 – The People v. Allen Dimen Deleon.

The case is remanded for further proceedings, at the election of the prosecution, as to the section 1202.1 AIDS testing order. In all other respects, the judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication)

Friday, September 30, 2005 (continued)

Division Four

A107820 – The People v. Gizelle Uilani Moreno.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J.
(Not for Publication)

A105688 – The People v. Rafael Bankston.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J.
(Not for Publication)

A108844 – The People v. Cutberto Matilde.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Rivera, J., Munter, J.*
(Not for Publication)

A107868 – Dora Santos et al., v. Michael C. Wood et al.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Munter, J.*
(Not for Publication)

A108204 – The People v. Mark E. Bovenkerk.

The judgment is affirmed. Munter, J.* We Concur: Reardon, Acting P.J., Sepulveda, J.
(Not for Publication)

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, September 30, 2005 (continued)

Division Five

A105910 – William Bucy v. AT&T Wireless Services, Inc.

The order denying arbitration is reversed insofar as it is based upon a finding that no arbitration agreement exists. The matter is remanded to the trial court for further proceedings on whether the unconscionable ban on class-wide arbitration should be severed from the remainder of the arbitration agreement. Costs are awarded to respondent. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication)

A106731 – Omar Bahnasy et al., v. City of Livermore et al.

The judgment of dismissal is affirmed. The request for judicial notice is denied. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

A107728 – Mickel Wesenhagen v. Diane D. Wesenhagen.

The trial court's order is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

A108030 – The People v. Gilbert Eugene Maestas.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Certified for Partial Publication)

A106061, A106340 and A106341 – Porsha Meoli, Alan Cherrigan Jael Salas, et al., v. AT&T Wireless Services, Inc., et al.

The order denying the petition to compel arbitration is affirmed. Costs are awarded to respondents. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication)